IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.421 OF 2005

The Mogaveera Co-op.Bank Ltd. ....Petitioner.

Vs.

Satish Sanjiva Mendon & ors. ...Respondents.

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Mr.C.S.Karkera for the Petitioner.

Mr.M.V.Holamagi for Respondent No.1.

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CORAM : DR.D.Y.CHANDRACHUD, J.

March 29, 2005.

P.C. :

Rule, returnable forthwith. Mr.Holamagi appearing on behalf of the First Respondent waives service. By consent taken up for hearing and final disposal.

The Petition is directed against an order passed by the Divisional Joint Registrar, Co-operative Societies dated 14th January 2004, while disposing of two Revision Applications. On

31st March 2003, the Assistant Registrar passed an order under Section 101 of the Maharashtra Co-operative Societies Act, 1960, allowing the application filed by the petitioner for the recovery of its dues from the Respondents. The total amount to be recovered was Rs.26,96,509/-. The Divisional Joint Registrar set aside the recovery certificate on the ground that upon the Constitution of the Debt Recovery Tribunal under the Recovery of Debts Due To Banks and Financial Institutions Act, 1993, the DRT has the exclusive jurisdiction to entertain and decide applications of Banks and financial institutions for the recovery of debts due to them and that consequently, no jurisdiction can be exercised under Section 101 of the State Act. Reliance was placed on the judgment of of Full Bench of this Court dated 12th December 2003 in Writ Petition 6079 of 2002.

The judgment of the Full Bench of this Court, it is common ground, has been carried in appeal to the Supreme Court in **Greater Bombay Co-op.Bank Ltd. vs. M/s.United Yarn Tex Pvt.Ltd.**(Petition for Special Leave to Appeal (Civil) No.886 of 2004). The Supreme Court has while granting leave, stayed the operation of the

judgment. A copy of the order of the Supreme Court dated 16th January 2004 has been placed on the record of these proceedings. In the circumstances, the Divisional Joint Registrar ought to have determined the merits of the Revision Applications that were filed before him, but this was not done.

In the circumstances, the impugned order dated 14th January 2004 is quashed and set aside. Revision Application Nos.778 and 779 of 2003 are restored to the file of the Divisional Joint Registrar. Parties shall appear before the Divisional Joint Registrar for directions on 11th April 2005. The Divisional Joint Registrar shall dispose of the Revision Applications on or before 30th June 2005. According to Counsel appearing on behalf of the Respondents, the Respondents have duly complied with the requirement of Section 154A by depositing 50% of the amount due and payable under the recovery certificate. This shall be subject to due verification by the Divisional Joint Registrar. The Petition is accordingly allowed to the aforesaid extent. There shall be no order as to costs.

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